



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/163253

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Works (W-2) in regard to Other, a hearing was held on February 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly issued a Public Assistance Collection Unit Levy against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: MacArthur Strawder
MAXIMUS, Inc.
4201 N 27th Street
Milwaukee, WI 53216

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 22, 2012 the Department sent the petitioner notices stating that she was overpaid W-2 benefits in the amount of \$2,306.00 for claim number [REDACTED], \$24.00 for claim number [REDACTED], \$6.90 for claim number [REDACTED], and \$7.00 for claim number [REDACTED].

The total due for all claim numbers was \$2,343.90. The petitioner never requested a hearing on the overpayments.

3. On November 2, 2012 the agency sent the petitioner a repayment agreement.
4. On February 4, 2013, January 3, 2013, and December 4, 2012 the Department sent the petitioner dunning notices reminding her that she owed \$2,343.90.
5. On June 10, 2014 the petitioner paid \$103.00. The Department deducted this amount from what the petitioner owes.
6. On December 19, 2014 agency sent the petitioner a Notice of a Public Assistance Collections Unit Levy. The notice informed the petitioner that the Department of Children and Families had issued a levy against her in the amount of \$2,240.90.
7. On January 16, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to W-2 benefits) the department may recover an overpayment by use of a levy under Wis. Stat., §49.195 (3N). Wis. Adm. Code, §DCF 101.23(10)(b) provides as follows: "1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt." Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. Wis. Admin. Code, §DCF 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

In this case there is no question as to the identity of the debtor. Further, there is no issue as to the amount of the debt. I note that the Department reduced the amount of debt owed when the petitioner made a payment in June 2014.

The petitioner sought to challenge the underlining W-2 overpayment. The Division of Hearings and Appeals (DHA) can hear and decide an issue on the merits only if there is legal authority for it to do so. In legal language this is called "jurisdiction". If there is no jurisdiction, the ALJ cannot decide the issue. Wis. Admin. Code §HA 3.05(4)(a).

The Division of Hearings and Appeals does not have jurisdiction over W-2 overpayments. Wis. Admin. §DCF 101.23(2)(d) confers the authority for review of W-2 overpayments to the Wisconsin Works Agency, not the Division of Hearings and Appeals. Wis. Stat. §49.152(2). In addition, the time limit to appeal a W-2 overpayment is 21 days. Wis. Stat. §49.152(2)(b). Therefore, I do not have jurisdiction to address the overpayment issue.

CONCLUSIONS OF LAW

The agency properly implemented a tax levy.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of February, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 13, 2015.

Wisconsin Works (W-2)
Public Assistance Collection Unit